

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. ZELDA JONAS
Justice

MOUNT SINAI HOSPITAL, As Assignee of
JAMES GLADDEN, CATHERINE GURSKY,

Plaintiff,

- against -

TRAVELERS PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

TRIAL/IAS PART 27

Index #4309/00

Sequence #: 4
Motion Date: April 19, 2001

Notice of Motion	1
Affirmation in Opposition.....	2
Reply Affirmation.....	3

Motion by plaintiff for summary judgment on its request for statutory interest and attorney's fees on the sum already paid under the second cause of action is denied. The Court has searched the record pursuant to CPLR 3212(b) and finds that defendant is entitled to summary judgment dismissing this action.

Plaintiff is the assignee of no-fault benefits allegedly owed by defendant for services provided to James Gladden and Catherine Gursky. The first cause of action for benefits owed for services provided to James Gladden has been withdrawn. The sum due pursuant to the second cause of action, namely \$77,346.49, for services provided to

Catherine Gursky was paid on May 9, 2000. All that remains of this lawsuit is plaintiff's request for statutory interest and attorney's fees.

A no-fault claim must be paid or denied within 30 days or it is overdue, commencing the accrual of statutory interest and attorney's fees (Insurance Law §5106(a); 11 NYCRR §§65.15(g)(1)(i); 65.15(h)(1); 65.15(i)(1); **Bonetti v Integon National Insurance Company**, 269 AD2d 413). However, there is an exception to the 30-day rule on which defendant herein relies. Within 10 days of receipt of a no-fault claim, an insurer may seek verification of a claim [11 NYCRR §65.15(d)(2)]. If the requested verification is not received within 30 days, the insurer must follow up either by telephone call or mail [11 NYCRR §65.15(e)(2)]. Where these procedures are followed and the requested verification is not supplied, the 30-day pay or deny period is not triggered (**Westchester County Medical Center v New York Central Mutual Fire Insurance Company**, 262 AD2d 553).

Defendant here alleges that it received the Gursky no-fault bill and NF-5 verification form on February 3, 2000. By letter to plaintiff dated February 7, 2000, defendant requested further verification. By letter to plaintiff dated March 7, 2000, defendant again requested further verification. At the time of commencement of this action, the verification requested had not been received. Consequently, defendant argues that the claim was not overdue, and therefore, interest and attorney's fees were not yet accruing.

Plaintiff's only response to the foregoing is that the verification requests were not on prescribed forms. However, this Court finds that the original verification request may be by an appropriate letter (**Westchester County Medical Center, supra; see generally, Presbyterian Hospital in the City of New York v Aetna Casualty & Surety Company, 233 AD2d 431, lv app den 90 NY2d 802**), especially where it is addressed to the hospital and made within the regulatory time scheme. (*Cf. Mount Sinai Hosp v Triboro Coach, 263 AD2d 11.*) The second verification request certainly passes muster as it was made within the appropriate time frame, and indeed a telephone call would have been adequate. (*Cf. Presbyterian Hospital in the City of New York, supra.*) Plaintiff's reliance upon **Presbyterian Hospital v Maryland Casualty Company (90 NY2d 274)** and **Mount Sinai, supra**, is misplaced as those cases are factually distinguishable.

On this record, not only has plaintiff failed to establish its right to interest and attorney's fees on the Gursky claim in the second cause of action, the Court is compelled to conclude that plaintiff has no such viable claim. Consequently, plaintiff's motion for summary judgment must be denied, and defendant is hereby awarded summary judgment dismissing this action [CPLR 3212(b)].

Dated: 5/31/01

ENTERED

JUN 04 2001

NASSAU COUNTY
COUNTY CLERKS OFFICE


J.S.C.